

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2009CA2995
)	EEOC NO.:	21BA91567
VICENTE DEANDA)	ALS NO.:	10-0188
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Charles Box, Marylee V. Freeman and David Chang presiding, upon Vicente DeAnda's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CA2995; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. The Petitioner was formerly employed by Adjustable Clamp Company ("Employer"). On March 24, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the Employer discharged him on March 20, 2009 because of his age, 60, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act") On February 10, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On March 16, 2010, the Petitioner timely filed this Request.
2. In March 2009, the Employer eliminated its second shift and laid off a total of 40 employees, including the Petitioner. The Employer stated it laid off the employees due to a decline in business. Of those 40 employees laid off by the Employer, some were younger than the Petitioner, including employees who were 26, 33, 36, 40, and 50 years old.
3. At the time he was laid off the Petitioner was a Foreman on the first shift who was in charge of overseeing three production lines.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

4. Another Foreman from the Employer's first shift (age 42) as well as a second-shift Foreman (age 64) were also laid off on March 20, 2009.
5. The Employer transferred a second shift General Foreman (age 40) to the first shift to work as a General Foreman.
6. The Employer stated it retained certain employees who had specialized knowledge of specific departments, and that it laid off its production line Foremen. The job titles of the 10 individuals transferred from the second shift to the first shift, in addition to General Foreman, are: **(1)** Set Up Man; **(2)** Operator; **(3)** Tool Maker; **(4)** Handy Man, and **(5)** Lead Man. Further, these retained employees ranged in age from 37 to 58 years old.
7. In his charge and his Request, the Petitioner argues that he was laid off because of his age and that he was replaced by a younger individual, namely the 40-year-old General Foreman.
8. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of substantial evidence.

CONCLUSION

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS § 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258 (March 7, 1995).

The Commission found no substantial evidence that the Employer discharged the Petitioner because of his age. The evidence shows that in March 2009, the Employer laid off employees of various ages, including employees who were significantly younger than the Petitioner. Further, the evidence shows the Employer retained various employees who were in the protected age group, including employees who were very close in age to the Petitioner. There is no substantial evidence that the Employer's decision to lay off the Petitioner was motivated by the Petitioner's age.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

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In the Matter of the Request for Review by: Vicente DeAnda

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Adjustable Clamp Company, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 3rd day of November 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles Box